IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3401 OF 2006

President/Secretary, the Union
Education Society & Anr. ...Petitioners.
Vs.
Maniyar Rizwana Murtuma & Ors. ...Respondents.
....
Mr. V.B. Naik for the Petitioner.
Mr. I. M. Khairdi for Respondent No.1.
Mr. Deepak Patil, AGP for the State.
.....

**CORAM : DR.D.Y.CHANDRACHUD, J.**

**June 29, 2006**.

**P.C.**

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The First Respondent has passed the M.Sc. Degree with Mathematics and holds a B. Ed. qualification as well. The First Respondent was, in the first instance, duly qualified to hold the

post of an Assistant Teacher in view of the qualifications prescribed in Schedule-B to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The First Respondent had applied to the management on 16th June 1999 for appointment as an Assistant Teacher for the Academic Year 1999-2000. The First Respondent was accordingly appointed in a clear, vacant and permanent post as an Assistant Teacher on a part time basis, subject to the approval of the Education Officer. The School Tribunal has noted that while initially the First Respondent was appointed as a part time teacher for 1999-2000, the workload increased from June 2000 and consequently, the First Respondent was given a workload of a full time teacher from June 2000. The First Respondent worked as a full time teacher right until the Academic Year 2002-03. The management did not submit a proposal of the First Respondent to the Education Officer for approval which is necessary in view of the fact that the school is receiving grants-in-aid of the State. The management, however, sent a proposal of five other teachers who were appointed in 1998-99 like the First Respondent and approval was granted in respect

of those teachers. In the meantime, on 11th January 2001, the management advertised the post of Shikshan Sevak. The First Respondent also applied to the management and was selected for appointment as a Shikshan Sevak. The management submitted an application for approval to the Education Officer in 2002, but the Education Officer declined to grant approval on 27th September 2002 purportedly for the reason that the educational qualification that was required was D.Ed. The services of the First Respondent were accordingly dispensed with on 31st December 2002, in view of the refusal of the approval by the Education Officer, the First Respondent moved the School Tribunal to challenge the order of termination. The Tribunal noted that it is an undisputed fact that the management did not submit a proposal of the First Respondent to the Education Officer when the proposal of similarly placed five teachers, who were appointed in 1998-99, was submitted and the approval was sought of the Education Officer. In the affidavit in reply that was filed by the Education Officer, it was clarified that a regular and sanctioned post was in fact, available and that the First Respondent had been appointed on 16th June 1999 on a

probationary basis. Since the management had, according to the Education Officer, not submitted a proposal in respect of the First Respondent together with the proposal that was sent for other teachers, there was no question of the Education Officer considering the case for the grant of his sanction. The Tribunal noted that while the other candidates to whom approval was granted had passed B.A. and B.Ed. degrees, the First Respondent was found to be a duly qualified candidate to whom the workload of the Secondary School to the extent of 36 teaching periods was assigned in a week. The Tribunal noted that the appointment of the First Respondent as a Shikshan Sevak subsequently, was unlawful in the sense that the First Respondent having been appointed to the regular and sanctioned post of an Assistant Teacher on a probationary basis, her status as such could not have been disturbed. The termination was held to be illegal and the order of termination has accordingly been quashed and set aside. The management has been directed to reinstate the First Respondent together with consequential benefits including back wages. The Education Officer who has been held jointly and

severally responsible together with the management, has been permitted to deduct the amount of back wages from the non-salary grant of the School.

3. On behalf of the management it has been submitted that the services of the First Respondent came to be dispensed with in view of the communication dated 27th September 2002 of the Education Officer which noted that the First Respondent did not hold the D.Ed. qualification. There is no dispute about the fact, as there cannot be any, that the First Respondent was duly qualified to hold the post of an Assistant Teacher in a Secondary School as she holds both the M.Sc. and B.Ed. qualifications The First Respondent was appointed in a clear and permanent vacancy initially as an Assistant Teacher on a part time basis, but subsequently she was assigned a full time workload since that was available. The Education Officer has stated that it was the fault on the part of the management in not submitting the proposal for approval in regard to the 1st Respondent together with the proposal of other five teachers. Whatever may be the factual position in that

regard, it is unfortunate that the First Respondent who is a duly qualified teacher has been made to suffer, as a result. There is no reason why the First Respondent should not have been reinstated as an Assistant Teacher since she was appointed as an Assistant Teacher in a clear and permanent vacancy. The termination itself was improper. The reply of the Education Officer in the School Tribunal has lent support to the case of the First Respondent.

4. In these circumstances, the order of reinstatement passed by the Tribunal together with back wages does not warrant interference under Article 227 of the Constitution. However, since the Petitioner is an institution which is an aided institution, it would be necessary to issue a direction to the effect that it would be open to the Petitioner to apply to the Education Officer for release of the grant-in-aid corresponding to the claim of the First Respondent towards back wages. Such an application shall be made within two weeks and shall be disposed of by the Education Officer within a period of four weeks thereafter. Counsel appearing on behalf of the First Respondent states that in order to

facilitate compliance of the order, the First Respondent shall not for a period of eight weeks from today take any coercive step for enforcing the order of back wages. The First Respondent shall, however, be reinstated immediately. In view of the stand taken by the Education Officer before the Tribunal, it would be necessary to direct that the Education Officer shall now proceed to grant his approval to the First Respondent.

5. The salary which has been received by the First Respondent as a Shikshan Sevak shall be adjusted in computing the back wages that are due and payable to the First Respondent. The date of appointment for computation of back wages and for other purposes, it is clarified, shall be commencing from the Academic Year 2000-01 when the First Respondent came to occupy a full time post.

6. The Petition is accordingly disposed of. There shall be no order as to costs.

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